B.C.R.H. DEPARTMENT — 1003 Rev(T) dt 28/2/57

BRANCH

R.S.D.P. No. 67

57

Subject:— Enforcement of penal clauses of Contracts & Agreements by Govt. & Quasi Govt. against Migrants to Pakistan

Contracts & Agreements.

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CONFIDENTIAL

Correspondence

DOCKET SHEET

Subject :—

File No. _____

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References :—

Date.	To whom sent.	Notes and instructions.

and its accompaniment.

Secret.

No.R.66/29713-C.
Rehabilitation Department,
Secretariat,(Annexe) Fort,
Bombay, 23rd October 1952.

Forwarded with Compliments:-
All Departments of secretariat,
All Heads of Departments and Heads of Offices, under the Administrative control of various Departments of Secretariat.

2. The heads of Departments and offices are requested to furnish to their respective Administrative Departments the quarterly statements as required in paragraph 4 of the letter from the Ministry of Rehabilitation

3. All Departments of Secretariat are requested to consolidate the reports received from the Departments and offices under their Administrative control and forward the information to this Department in triplicate in the required statement within the first fortnight succeeding every quarter.

4. The amount of fines and forfeiture should be credited to the new minor head "Fines,forfeitures etc., in respect of contractors who migrated to Pakistan" under the head "P-Deposit and Advances-Part IV-Suspense-Suspense Accounts".

5. The first quarterly report of this kind should be forwarded for the quarter ending September 1952. It should also include the information, if any, pertaining to the period prior to the quarter from 1st July 1952 to the 30th September 1952.

6. The Education Department and the Local Self Government and Public Health Department are requested to issue suitable instructions to the local bodies concerned.

By order of the Governor of Bombay,

J. C. Fernandex,
for Secretary to the Govt. of Bombay,
Rehabilitation Department.

Copy of Government of India, Ministry of Rehabilitation,New Delhi letter No.11(2)(2)/51-N, dated 25th January 1952.

Subject:- Enforcement of penal clauses of contracts and agreements by Government and quasi Government Departments against migrants to Pakistan.

Sir,

I am directed to say that at the time of partition, there were many subsisting contracts and agreements between Governments and private individuals/firms/companies, performance of which was rendered impossible on account of disturbances beyond the control of the person contracting or agreeing. The Govt. of India considered the situation that had arisen and proposed to the Govt. of Pakistan that the migrants from either country should not be penalised for non-fulfilment of the conditions of a contract, or agreement when their failure to do so was due to circumstances beyond their control

connection the Govt. of India indicated that the proposal was merely an extension of the Agreement already arrived at in respect of Improvement Trust plots which was arrived at in December 1948 and which reads as follows:-

"It was agreed that the rights of the evacuee owner should be forfeited. The sale of Improvement trust plots generally include a condition that the failure to build within a specified period, or to pay the necessary numbers of instalments would mean forfeiture of the plots of land by the Improvement Trust. It was agreed that such penal conditions should be held in abeyance. This does not preclude the State from acquiring or requisitioning the land for the purpose of rehabilitation of refugees."

2. Despite reminders, no reply has been received to this proposal from the Government of Pakistan. On the contrary, it has been brought to the notice of the Government of India that Government in Pakistan, Central, Provincial, and State, have been freely enforcing the penal clauses of contracts and agreements and forfeiting security deposits and sums due on account of supplies and services rendered by migrants and compelling banks with them securities were deposited to make over these deposits to the Govt. or department etc.

3. Some of the cases in which penalties have been imposed are-

i) Resumption of lands-Forfeiture of earnest money and instalments paid.

In case of canal colony areas in Punjab(P) and barrage lands in Sind, the lands have been resumed for non.fulfilment of conditions of lease/purchase, even though non-fulfilment was because of circumstances connected with mass migration and therefore beyond the control of the person concerned.

ii) Forfeiture of securyty deposits and imposition of fine.

In cases of contracts for-

a) Food ration.
b) Cloth ration.
c) Liquor shops.
d) Revenue and excise.
e) Postal and treasury
f) Public Works e.g. canals, buildings road etc
g) Forest-leave of

the security deposits have been forfeited and fines/penalties imposed for breach of terms of the contract, besides forfeiture of amounts due for partial supplies and services rendered.

The type of cases mentioned above are illustrative only and not exhaustive.

4. In view of this position in Pakistan, the Government of India cannot be expected to agree to unilateral connections to persons who have migrated from India and it has, therefore, been decided as a measure of reciprocity, that the penal clauses of contracts/ agreements should also be enforced in this country on the lines

adopted in ....

adopted in Pakistan. I am to request that action may be taken accordingly and information of forfeitures etc. intimated to the Govt. of India quarterly (in the form enclosed) as such information will enable the Government of India to compare the volume of the forfeitures in both the countries. The amounts forfeited may be kept in a suspense account for it is quite likely that as a result of reciprocal action taken in India, the Pakistan Government may find it desirable ultimately to accept the proposal already made to them by the Government of India.

5. An acknowledgment is requested.

Hees 21/11/56

hss, 19/6

DRAFT PROFORMA

Name of the State.....

Sr. No.	Name of the Contractor.	Department.	Nature of contract.	Amount of Security deposit. Returned	Amount of Security deposit. Forfeited.	Fine/Penalty imposed for fulfilment of the conditions of Contract.	Any other amount forfeited.	No. and date of the order under which penal clause enforced.	Re

21/6/86
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